Arb. Case No.15 of 2006.

1.8.2006. Present: Mr. Ankush Dass Sood, Advocate, with Mr. Rahul Mahajan, Advocate, for the Petitioner.

Mr. Suneet Goel, Advocate, for the respondent.

Mr. Goel does not want to file any reply to this petition.

The Arbitration Agreement between the parties provides for the resolution of the disputes between the parties by making a reference to an Arbitral Tribunal comprising of two Members, each to be nominated by the parties. Clause 23.1 being the Arbitration Agreement reads thus:-

> **"In the event of any dispute or difference between the parties hereto as to the meaning, construction or effect of this Agreement or any clause or thing contained herein or rights and liabilities of the Company or LAKSHYA hereunder, the parties shall endeavor to amicably resolve the dispute within 7 days failing which the dispute shall be referred to arbitration by two Arbitrators each to be nominated by the Company and Lakshya under the provisions of Indian Arbitration and Conciliation Act, 1996."**

The parties have already nominated their respective nominee Members of the Arbitral Tribunal. Whereas the petitioner has nominated Shri J.C. Sood, a Retired Additional District and Sessions Judge,

respondent has nominated Shri Kamal Budhiraja, Advocate, Gurgaon. Even though the aforesaid Arbitration Agreement is not in consonance with Section 10 of the Arbitration and Concilition Act, 1996 in as much as the number of the mentioned Arbitrators is even, the parties agree that they shall be bound by the aforesaid Agreement in so far as resolution of disputes through arbitration is concerned, and since they have already appointed their respective nominee Arbitrators, I should appoint the Presiding Arbitrator who may be a retired High Court Judge.

Arising out of and based upon the aforesaid agreement between the parties accordingly the learned counsel for the parties suggest that Shri Justice K.C. Sood (Retired), a former Judge of this Court be appointed as the third Arbitrator who shall act as the Presiding Arbitrator. Accepting this suggestion, I hereby appoint Shri Justice K.C. Sood (Retired), a former Judge of this Court as the third, Presiding Arbitrator.

The Arbitral Tribunal, now constituted of three Members, namely, Shri Justice K.C. Sood (Retired) as the Presiding Arbitrator, Shri J.C. Sood and Shri Kamal Budhiraja as the nominee Member-Arbitrators of the parties, shall enter upon the

reference immediately and complete the arbitration proceedings as soon as possible and pass the Arbitral Award without any delay. Subject to the convenience of the Members of the Arbitral Tribunal the first sitting shall be held in the month of August, 2006.

The learned counsel for the parties submit that in view of the specific mention in the Arbitration Agreement that all arbitral proceedings should be held in Himachal Pradesh, a direction be issued by me that all such proceedings actually shall be held only in Shimla town. Noting this submission of the learned counsel for the parties, I direct that the arbitral proceedings shall be held in Shimla town unless, for compelling reasons and at the joint request of the parties the Arbitral Tribunal decides otherwise.

I hereby fix a lump sum fee of Rs.1.0 lac to be paid to the Presiding Arbitrator which shall be inclusive of the entire expenditure to be incurred by him as well as towards secretarial assistance. If the arbitration proceedings are not held in Shimla, the Presiding Arbitrator shall be paid a daily fee of Rs.10,000/-, plus actual traveling and other actual lodging and boarding expenses. The parties shall pay to the Presiding

Arbitrator the aforesaid fees and expenditure in equal shares. I do not propose to fix any fee of the nominee Arbitrators and leave it to the parties to settle it between themselves and their respective nominee Arbitrators.

The petition is disposed of.

1st August, 2006. (V.K. Gupta), C.J.
(tr)